

No. 14115

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ROBERTS BROTHERS,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

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PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

A. NORMAN SOMERS,

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Washington, D. C.,

For Petitioner, National Labor Rela-
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ROSENBERG, SWIRE & COAN, by

ABE EUGENE ROSENBERG,

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Portland, Oregon,

For Respondent, Roberts Brothers.

Form NLRB-501.

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Case No.: 36-CA-347.

Date Filed: 12-8-52.

Compliance Status Checked by: M.K.

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g) and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred, or is occurring.

1. Employer Against Whom Charge Is Brought:
Name of Employer: Robert Bros., 3rd & Morrison, Portland, Oregon.
Address of Establishment (Street and number, city, zone and State): 740 Willamette St., Eugene, Oregon.
Nature of Employer's Business (State whether manufacturing, mining, construction, transportation, communication, other public utility, wholesale or retail trade, service, etc., and give

principal product or type of service rendered.): Retail department store.

The above-named employer has engaged in and is engaging in, unfair labor practices within the meaning of Section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates places, etc.):

1. The company, by its officers and agents has refused to bargain collectively with the undersigned labor organization on and after December 3, 1952; the said labor organization having represented, and now representing, a majority of the employees in an appropriate bargaining unit composed of all employees of the Eugene store, excluding guards and supervisors, as defined in the Act.

2. By refusing to bargain, by questioning employees as to their interest in the undersigned and by other acts, the said company, by its officers, agents and supervisors, has interfered with the rights of its employees as defined in Section 7 of the Act.

3. Full name of Labor Organization, including Local Name and Number, or Person Filing Charge:

Local 201, Retail Clerks International Association, AFL.

4. Address (Street and number, city, zone, and State):

Box 60, Eugene, Oregon. Telephone No. 42022.

5. Full Name of National or International Labor Organization of Which it is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization):

Retail Clerks International Association, AFL.

6. Address of National or International, if any (Street and number, city, zone and State):

Lafayette, Indiana.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true, to the best of my knowledge and belief.

By /s/ GLIVA STEWARD,

(Signature of Representative
or Person Filing Charge)
Secretary-Treasurer.

Date: 12/8/52.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80.)

United States of America, Before the
National Labor Relations Board

Case No. 36-CA-347.

In the Matter of

ROBERTS BROTHERS

and

LOCAL 201, RETAIL CLERKS INTERNA-
TIONAL ASSOCIATION, AFL.

COMPLAINT

It having been charged by Local 201, Retail Clerks International Association, AFL, that Roberts Brothers, herein called Respondent, has engaged in, and is now engaging in, certain unfair labor practices affecting commerce as set forth and defined in the Labor-Management Relations Act, as amended, 61 Stat. 136, hereinafter referred to as the Act, the General Counsel of the National Labor Relations Board, hereinafter referred to as the Board, by the Regional Director for the Nineteenth Region designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

Roberts Brothers is an Oregon Corporation engaged in the business of selling general merchandise as a department store.

II.

In the course and conduct of its business, Respondent causes, and has caused, merchandise of value in excess of \$25,000 yearly to be shipped to and through the states of the United States other than the State of Oregon. The Respondent operates stores in Portland, Salem, Corvallis and Eugene, Oregon, with its offices and principal place of business at Portland, Oregon.

III.

Local 201, Retail Clerks International Association, AFL, herein called the Union, is, and at all times herein mentioned, has been, a labor organization within the meaning of Section 2 (5) of the Act.

IV.

Since November 15, and particularly on December 6, 1952, the Respondent, by its officers, agents and supervisors, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act by, inter alia, polling all its employees on the question of whether the employees desired to be represented by the Union for purposes of collective bargaining.

V.

By the acts described in Paragraph IV, and by each of them, and for the reasons therein set forth, Respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and by all of said acts, and each of them, Respondent has engaged in,

and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

VI.

The activities of Respondent as set forth in Paragraphs IV and V, occurring in connection with the operations of Respondent, as described in Paragraphs I and II, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led and tend to lead to, labor disputes burdening and obstructing commerce and the free flow of commerce.

VII.

The aforesaid acts of Respondent constitute unfair labor practices, affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 26 day of February, 1953, issues this Complaint against Roberts Brothers, the Respondent herein.

[Seal] /s/ THOMAS P. GRAHAM, JR.
Regional Director, National Labor Relations Board,
19th Region.

United States of America, Before the
National Labor Relations Board

Case No. 36-CA-347

[Title of Cause.]

STIPULATION OF THE RECORD

It is hereby stipulated and agreed by and between Roberts Brothers, hereinafter called Respondents, acting by and through Abe Eugene Rosenberg, its representative, and Retail Clerks International Association, AFL, Local 201, hereinafter called the Union, acting by and through Paul Hansen, its representative, and the General Counsel of the National Labor Relations Board, acting by and through Paul E. Weil, its attorney, as follows:

I.

Upon charges filed by the Union on the 8th day of December, 1952, and served on the Respondents on the 8th day of December, 1952, receipt of which is hereby acknowledged by said Respondents, the General Counsel of the Board, on behalf of the Board, by the Regional Director for the Nineteenth Region of the Board, acting pursuant to authority granted by Section 10 (b) of the National Labor Relations Act, as amended, herein called the Act, and pursuant to the Board's Rules and Regulations, Series 6, Section 102.15, duly issued a Complaint and Notice of Hearing, on February 26, 1953, against the Respondents herein, receipt of which is hereby acknowledged.

II.

This Stipulation, together with the Charge, Complaint, Notice of Hearing, and Affidavit of Service, and other proofs of service of the said Charge, Complaint and Notice of Hearing, shall constitute the entire record herein and shall be filed with the Board.

III.

None of the parties shall in any way, be prejudiced by the failure to file an answer.

IV.

Respondent is a corporation organized and existing under and by virtue of the laws of the State of Oregon, having its principal office and place of business in the City of Portland, Oregon, and operating department stores in Portland, Salem, Corvallis and Eugene, Oregon.

V.

Respondent has, in the twelve-month period preceding the issuance of Complaint, in the course and conduct of its business, caused merchandise of value in excess of \$25,000, to be shipped to and through the states of the United States, other than the State of Oregon, and in interstate commerce.

VI.

Respondent is, and at all times mentioned herein has been, an employer within the meaning of Section 2 (2) of the Act.

VII.

The Union is, and at all times mentioned herein,

has been, a labor organization within the meaning of Section 2 (5) of the Act.

VIII.

On or about December 3, 1952, by letter bearing that date, appended hereto and marked Appendix A, the Union represented to the Employer that the Union represented a majority of the employees in the Eugene store.

IX.

On or about December 6, 1952, a meeting was held of all store employees before the usual starting time for the sales personnel, and during working time for the few non-selling employees. The store manager addressed the employees, reading a prepared script, a copy of which is attached hereto and marked Appendix B.

X.

On or about December 6, 1952, at the conclusion of the speech referred to, in Paragraph IX, a secret poll by ballot of the employees was held in the following manner: One of the employees passed out slips which contained only the two words "for" and "against." The employees did not sign their names. The ballots were placed in a box. The store manager counted the ballots after the employees had been excused to return to work. Later in the day, the store manager posted a bulletin in the cafeteria announcing that 16 employees had voted "for," 39 had voted "against," and one ballot was "cast but not counted."

XI.

At the time of the balloting, there were approximately 44 regular and regular part-time non-supervisory employees of the Respondent, working in the store. At the same time, there were approximately 23 temporary employees employed by the Respondent in the Eugene store. It is not ascertainable to what extent temporary employees voted in the balloting except that there were twelve more votes cast than there were regular and regular part-time non-supervisory employees employed by the Respondent at that time.

XII.

All parties hereto expressly waive their right to the filing of an answer, a hearing before a Trial Examiner, Intermediate Report of a Trial Examiner, and agree that this Stipulation shall be the sole and only evidence received or considered by the Board. Within twenty days or within such further period as the Board may allow from the date of the execution of this Stipulation, any party may file with the Board in Washington, D.C., an original and six (6) copies of a Motion to Dismiss the Complaint or, in the alternative, Proposed Findings of Fact and Conclusions of Law, or for the entry of the Board of any Order appropriate to Findings of Fact or Conclusions of Law made by it, together with an original and six (6) copies of a Brief in support of said Motions or Proposed Findings of Fact or Conclusions of Law, and immediately upon such filing, shall serve a copy on each of the other parties. Upon special leave of the Board, any party may

file a Reply Brief upon such terms as the Board may impose. Should any party desire to argue orally before the Board, the request shall be governed by Section 102.46 (c) of the Rules of the Board. The provisions of Section 10 (e) and 10 (f) of the Act are not waived by this Stipulation.

XIII.

It is further stipulated and agreed that this Stipulation embodies the entire agreement between the parties and that there is no oral agreement of any kind which varies, alters, or changes it in any respect. If, for any reason, this Stipulation should not be signed by all the parties hereto or should fail to be fully effective, according to its terms, this Stipulation shall be null and void for all purposes, and shall not be offered or received in evidence in any proceeding.

In Witness Whereof, the parties hereto have caused this Stipulation of the Record to be executed by their duly authorized representatives this 9th day of March, 1953.

ROBERTS BROTHERS,

By /s/ ABE EUGENE ROSENBERG.
RETAIL CLERKS INTERNATIONAL ASSO-
CIATION, AFL, LOCAL 201,

By /s/ PAUL W. HANSEN.

/s/ PAUL E. WEIL,

Counsel for the General Counsel, National Labor
Relations Board, Region 19.

APPENDIX A

(Copy)

Retail Clerks' Union, Local 201

P. O. Box 60

Eugene, Oregon

December 3, 1952.

Dear Member: This is a copy of the official notification sent to your employer.

Mr. Block,
c/o Roberts Brothers,
740 Willamette St.,
Eugene, Oregon.

Dear Mr. Block:

You are hereby notified that Retail Clerks' Union, Local 201, represents a majority of the employees in your Eugene store.

Pending further negotiations, it is requested that you make no changes in the status of employees under the jurisdiction of the Union, nor should you intimidate or coerce directly, or indirectly, any of these persons, whether by calling meetings without due notice to the Union, or by approaching employees individually.

This formal notification is made because of this Union's experience in dealing with you, with regard to your store in Salem, last year.

You may wish to consult with your attorneys as

to your rights in dealing directly with your employees now that you have received this notification.

Very truly yours,

RETAIL CLERKS UNION,
LOCAL 201,

/s/ GLIVA STEWARD,
Secretary-Treasurer.

cc: Mr. Harry Roberts.

Paul Hansen, Regional Director,
Retail Clerks International.

APPENDIX B (Copy)

Apparently the present activities of the retail clerks professional organizers has once again spread confusion and misunderstanding among our organization. There are certain basic rights and facts that are guaranteed to you by law, the primary one being you are free to make your own decision as to whether or not a union is a desirable affiliation, without interference from the Clerks' International organization or from this firm or its representatives. There has been reported that certain alleged statements have been made by these paid organizers.

1. That it would be difficult to continue your employment if you did not join the Union now. This is untrue. Regardless of whether or not you join any union, this firm will not, nor could not discriminate

against any employee on this basis. The only standards that will apply now or in the future, is the individual's loyalty, ability and past service. It is beyond any person, any organization or firm to guarantee continuing employment to any or all persons. The individual's choice as to his possible union position will have no more bearing on his employment than his or her church or lodge affiliation.

2. Various and sundry percentages have been alleged as having already signed the Union membership, intimating that if you haven't joined, you won't be with the crowd. This count has not been verified, so do not be stampeded on this point.

There have been other questions of too minor a nature to be dealt with here in detail. If you wish any further information either as a group or individually, I shall be glad to supply this to the best of my ability.

The main thing you should consider, is this question: What will I gain if I join the Union, versus what will I necessarily have to sacrifice in return?

Do you want to replace our now pleasant person to person relationship where adjustments are made as needed, and personal requirements dictate for a strict contractual relationship where these things are spelled out and administered by an outsider who has been selected for you by the International Clerks' back East, whose success is necessarily measured by this organization in how many dues payers he can provide for them?

Have you considered the almost impossible task

of once you have made such a commitment of trying to change your minde and status?

Have you given enough thought to the fact that you might some day wish to change positions and you will have been employed in the only union complete department store in Eugene, and what the mental reaction might possibly be of some of the less progressive merchants?

That the present dues paid by our Portland sales people amount to more than \$40 per year, plus fines and assessments. Do you know that these dues were only 50c a month when they were first organized?

That the Portland people get no percentages on any sales except in furniture, appliances and shoes?

That the Portland sales people get no Christmas bonus, which amounts to as much as an extra two weeks' vacation pay, making it the same as if you were to receive four weeks paid vacation per year?

That the Portland sales people do not have a liberal one-day-a-month paid sick day when needed?

Have you considered coldly and objectively, those persons within your own organization who advocate this move? Are these people that you can respect and trust? Are these the people you want for your personal friends? Or are they constant misfits and malcontents? Are they, in most cases, those who have shown little or no appreciation for the many concessions they have received by this management?

I think, at this time, I should tell you something about Roberts Bros., as an organization. Roberts Bros. was founded about 70 years ago by two

brothers, namely Henry and Thomas Roberts in the City of Portland. They, of course, have passed away and the management is still controlled and wholly owned, by the second and third generations of the Roberts. Mr. E. H. Roberts is presently the head of our company, with Bill Roberts the general manager, with him is his brother, Dick, who is the buyer in our coat dept., in Portland, and also looks after the valley stores which are located in Salem, Corvallis and, of course, here in Eugene. They wholly own Roberts Bros., and are vitally interested in each unit, and also, in the employees of those stores. I, personally have been working for Roberts Bros. for over twenty years and have enjoyed the relationship to the utmost. I have never found them to be unfair to anyone or to any organization. In Portland, they are well known to all, for their ability as good storekeepers and for their liberal ideas and fairness to all. I wish you could talk to some of the people who have been with our organization of many years, some of them have been there 50 years, and get their feeling of loyalty. I am sure you understand how I feel about them, because I think they are the finest firm in the world to work for.

I am pointing out just a few of the things you should consider. Just remember, that no one may threaten, coerce, or promise reward, that this firm will treat with any union, if you so desire without reference to the individual, and we will just as

diligently protect non-union or union members from discrimination or abuse.

The decision must be your own. You are the ones that in any event, must bear the effects. Your wages, hours and conditions, I feel sure, are equal or better to any prevailing in the Eugene area. This has always been the firm's objective for a very selfish reason, that the best people are the most economical. And yet, it should be pointed out, that in any industry, the wages of any store cannot be appreciably beyond the competitive scale paid by its neighbors. So, it follows, that scales paid in Portland are not the same as Eugene, in all cases, nor are those paid in Detroit the same as Portland, and so on, from city to city.

To summarize, Roberts Bros. did not supply the union contract representatives with the names and addresses of you people.

We have maintained an impartial stand and did not authorize any representative of any activity, to disturb your privacy at home, nor to solicit your attentions during store hours.

You, who have been here any length of time, are well aware of the close relationship in existence between you and the management of the Eugene store. Your individual problems and concerns relative to your position have always been handled on a fair and dignified level with certain partialities, in many cases, to your own advantage, and in your own interests. Under the union arrangement, this close contact between you and the management is greatly

diminished. Your problems are reported to a representative of the Union who may be appointed from any area of the country, and he presents your problem to the management on strictly an impersonal basis and the management acts upon the situation in an impersonal and cut-and-dried fashion. If each of you will recall something in your past relationship with the management, that was of a personal nature, and most of you can, it was always met with understanding and comprehension to the point where your problem, personal as it was, became a concern of your management and every effort to assist you and console you during your remorse was exercised. Is this relationship, which is human and understanding, to be replaced with the impersonal dealings of a third party? That is your decision to make.

Under the union arrangement, the security of your job is not assured any more than it is at present. Merely by being a member of a union does not assure your job security. The management exercised its rights for satisfactory performance under union contract, as it does now, only the personal element and the individual situation does not enter so completely under the union contract. It becomes very impersonal as far as this analysis is concerned. Our record in this store speaks for itself. You have but to look and see how few actual releases have been made during the years. Is this not an example of maximum security?

We are interested in determining the desires of

all of you. I shall pass out a slip of paper on which are two typed words, Against and For. If you desire the union, vote "For." If you are against, place an X alongside the word "Against." This is a survey to determine your feelings and obviously, it will be a secret ballot for our information. I thank you for your kind indulgence during this matter.

[Stamped]: Informal.

United States of America, Before the
National Labor Relations Board

Case. No. 36-CA-347

In the Matter of

ROBERTS BROTHERS,

and

RETAIL CLERKS INTERNATIONAL ASSO-
CIATION, AFL, LOCAL 201.

DECISION AND ORDER

Upon the charge duly filed on December 8, 1952, by Retail Clerks International Association, AFL, Local 201, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Nineteenth Region, issued a complaint, dated February 26, 1953, against Roberts

Brothers, herein called the Respondent, alleging that the Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (a) (1) of the Act. Copies of the complaint, the charge, and notices of hearing were duly served upon the Respondent and the Union, on or about, February 26, 1953.

With respect to the unfair labor practice, the complaint alleges, in substance, that, on or about December 6, 1952, the Respondent conducted a poll among its employees on the question of whether the employees desired to be represented by the Union for the purposes of collective bargaining, in violation of Section 8 (a) (1) of the Act.

Thereafter, all parties entered into a stipulation which set forth an agreed statement of facts. The stipulation provides that the parties, thereby, waived their rights to a hearing and to the taking of testimony before a Trial Examiner of the National Labor Relations Board. The stipulation further provides, that, upon such stipulation and the record as therein provided, the Board may make findings of fact, conclusions of law, and may issue the Decision and Order as if the same facts had been adduced in open hearing before a duly authorized Trial Examiner of the Board.

The aforesaid stipulation is hereby approved and accepted and made part of the record in this case.

In accordance with Section 102.45, of the National Labor Relations Board Rules and Regulations, this proceeding was duly transferred to, and continued before, the Board.

Upon the basis of the aforesaid stipulation, and the entire record in this case, the Board, having duly considered the brief filed by the Respondent, makes the following:

Findings of Fact

I.

The Business of the Respondent:

Respondent is an Oregon corporation, having its principal office and place of business in the City of Portland, Oregon, and operating department stores in Portland, Salem, Corvallis and Eugene, Oregon. The Respondent in the twelve month period preceding the issuance of the Complaint, in the course and conduct of its business, has caused merchandise valued in excess of \$25,000, to be shipped to and through States of the United States other than the State of Oregon.

We find that the Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II.

The Organization Involved.

Retail Clerks International Association, AFL, Local 201, is a labor organization within the meaning of Section 2 (5) of the Act.

III.

Unfair Labor Practice.

The issue and surrounding relevant facts.

The sole issue in this case, on the facts stipulated by the parties, is whether the Respondent violated Section 8 (a) (1) of the Act, by conducting a secret poll to ascertain its employees' desires as to representation by the Union which claims to represent a majority of such employees.

By letter, dated December 3, 1952, the Union informed the Respondent that it represented a majority of the employees employed at the Employer's store in Eugene, Oregon.

On, or about, December 6, 1952, the Respondent's store manager called a meeting of all store employees, during the course of which, he addressed the employees from a prepared script concerning the Respondent's feelings toward union organization and membership. The statements contained in this address did not exceed the "free speech" provision of Section 8 (c) of the Act, and are not alleged specifically in the complaint, to constitute an unfair labor practice. The statements, however, clearly indicated the Respondent's desire not to have the Union represent the employees. Before concluding his speech, the store manager made the following remarks:

"We are interested in determining the desires of all of you. I shall pass out a slip of paper, on which are typed two words, 'Against' and 'For.' If you desire the Union, vote 'for.' If

you are against, place an 'X' alongside the word, 'against.' This is a survey to determine your feelings and obviously it will be a secret ballot for our information. I thank you for your kind indulgence during this matter."

Accordingly, one of the employees passed out among the employees present at the meeting, slips of paper, which contained the words "For" and "Against." Each employee indicated his desire on his slip of paper without signing his name, and placed the slip into a box. The store manager counted the ballots after the employees had returned to work. Later in the day, he posted a bulletin in the store cafeteria, announcing that 16 employees had voted "For," 30 had voted "Against," and 1 ballot was "cast but not counted."

At the time of the balloting, there were approximately 44 regular and regular part-time non-supervisory employees of the Respondent working in the store. At the same time, there were approximately 23 temporary employees employed by the Respondent in the Eugene store. It is not ascertainable, to what extent, temporary employees voted in the balloting, except, that there were twelve more votes cast than there were regular and regular part-time non-supervisory employees, employed by the Respondent at that time.

Conclusions with respect to the employee poll.

The Respondent contends that Section 8 (a) (1) of the Act, was not violated, because the poll was conducted in an atmosphere free from other em-

ployer unfair labor practices. We find no merit in this contention. For the reasons stated in *Protein Blenders, Inc.*, 105 NLRB, No. 137, we find that the Respondent, by conducting a private poll of its employees to determine their union sentiment, under the circumstances set forth above, violated Section 8 (a) (1) of the Act, thereby, interfering with, restraining and coercing its employees in the exercise of their rights, guaranteed by Section 7 of the Act.

IV.

The effect of the unfair labor practice upon commerce.

The activities of the Respondent set forth in Section III, above, occurring in connection with its operations described in Section 1, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes, burdening and obstructing commerce in the free flow of commerce.

V.

The Remedy.

Having found that the Respondent has interfered with, restrained and coerced its employees by polling them as to their union desires, in violation of Section 8 (a) (1) of the Act, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact and

upon the entire record in the case, the Board makes the following:

Conclusions of Law

I.

Retail Clerks' International Association, AFL, Local 201, is a labor organization within the meaning of Section 2 (5) of the Act.

II.

By polling its employees as to their union sentiment, the Respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has violated Section 8 (a) (1) of the Act.

III.

The aforesaid unfair practice is an unfair labor practice affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Roberts Brothers, and its officers, agents, successors and assigns shall:

I.

Cease and desist from conducting polls among its employees to determine their union sentiment or in any other like or related manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, form labor or-

ganizations, to join or assist Retail Clerks International Association, AFL, Local 201, or any other labor organization; to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from any or all such activities, except to the extent that such right may be effected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

II.

Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Post at its store in Eugene, Oregon, copies of the notice attached hereto and marked "Appendix."¹ Copies of such notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt, thereof, in conspicuous places, including all places where notices to employees are customarily posted, and maintained by it for a period of sixty (60) consecutive days, thereafter. Reasonable steps shall be taken by the Re-

¹In the event that this Order is enforced by a Decree of the United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words, "Pursuant to Decree of the United States Court of Appeals, Enforcing an Order."

spondent, to assure that said notices are not altered, defaced or covered by any other material:

(b) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C., July 24, 1953.

JOHN M. HOUSTON,

Member;

ABE MURDOCK,

Member;

PAUL L. STYLES,

Member;

IVAR H. PETERSON,

Member.

[Seal]

NATIONAL LABOR
RELATIONS BOARD.

D-7535

APPENDIX

Notice to all Employees of Roberts Brothers
Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not poll our employees concerning their desires or wishes, relative to the Retail Clerks International Association, AFL, Local 201, or any other labor organization, or in any like or related manner,

interfere with, restrain or coerce, our employees in the exercise of their rights of self-organization, to form labor organizations or to join or assist the above-named union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all, such activities, except to the extent, that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

All of our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named union or any other labor organization, except to the extent, that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

Dated

ROBERTS BROTHERS,
(Employer.)

By,
(Representative.) (Title.)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

ROBERTS BROTHERS,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its executive secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceeding had before said Board, entitled, “In the Matter of Roberts Brothers and Retail Clerks International Association, AFL, Local 201,” the same being known as Case No. 36-CA-347 before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Charge filed by Local 201, Retail Clerks International Association, AFL, on December 8, 1952,

together with affidavit of service and United States Post Office return receipt thereof.

(2) Complaint and Notice of Hearing issued by the Regional Director on February 26, 1953, together with affidavit of service and United States Post Office return receipts thereof.

(3) Stipulation of the Record dated March 9, 1953, (and attachments thereto), setting forth an agreed statement of facts; providing that the parties thereby waived their rights to a hearing and to the taking of testimony before a Trial Examiner of the National Labor Relations Board; and providing that the Board make findings of fact, conclusions of law, and issue its Decision and Order.

(4) Copy of Board's Decision and Order approving stipulation of record and transferring case to the Board, findings of fact and order issued by the National Labor Relations Board on July 24, 1953, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 20th day of November, 1953.

[Seal]

FRANK M. KLEILER,
Executive Secretary.

NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 14115. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Roberts Brothers, Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed November 24, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States of America, Before the
National Labor Relations Board

Case No. 36-CA-347

In the Matter of:

ROBERTS BROTHERS

and

RETAIL CLERKS INTERNATIONAL ASSOCI-
ATION, A.F.L., LOCAL 201.

MOTION TO DISMISS BOARD'S COMPLAINT

Comes now the Respondent and moves the Board for an Order dismissing the Board's Complaint on the grounds and for the reasons:

First: That the sole act alleged to have been committed by Respondent, to wit: “* * * polling all its employees on the question of whether the employees desired to be represented by the Union for purposes of collective bargaining” does not constitute an unfair labor practice within the meaning of Sections 8 (a) (1) and 7 of the Act.

Second: That based upon the Stipulation of Record herein, the employer-conducted secret poll by ballot was not in violation of Sections 8 (a) (1) and 7 of the Act and under Section 10 (c) of the Act, the Board should issue an order dismissing the said Complaint.

ABE EUGENE ROSENBERG,
Of Counsel for Respondent,
Roberts Bros.

In the United States Court of Appeals
for the Ninth Circuit

No. 14115

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ROBERTS BROTHERS,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Roberts Brothers, and its officers, agents, successors and assigns. The proceeding resulting in said Order is known upon the records of the Board as "In the Matter of Roberts Brothers and Retail Clerks International Association AFL, Local 201, Case No. 36-CA-347."

In support of this petition the Board respectfully shows:

(1) Respondent is an Oregon corporation engaged in business in the State of Oregon, within this judicial circuit where the unfair labor practices oc-

curred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on July 24, 1953, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, and its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring

Respondent, and its officers, agents, successors and assigns, to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 30th day of October, 1953.

[Endorsed]: Filed November 3, 1953.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-
MENT OF AN ORDER OF THE NA-
TIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Respondent, Roberts Brothers, for its answer to the petition of the National Labor Relations Board, admits, denies and alleges as follows:

1. Respondent admits Paragraph I, except that it denies that it committed an unfair labor practice and Respondent further denies that this Court has jurisdiction until the transcript of the entire record is filed with it.

2. Respondent admits Paragraph II.

3. Respondent admits Paragraph III, but denies

this Court's jurisdiction until such time as said transcript is filed.

4. Respondent alleges that the Order sought to be enforced by this proceeding is not entitled to enforcement upon the following grounds:

(a) The sole act alleged to have been committed by Respondent, to wit: “* * * polling all its employees on the question of whether the employees desire to be represented by the Union for purposes of collective bargaining” does not constitute an unfair labor practice within the meaning of Sections 8 (a) (1) and 7 of the Act.

(b) Based upon the Stipulation of record herein the employer-conducted secret poll by ballot was not in violation of Sections 8 (a) (1) and 7 of the Act.

(c) Respondent's motion before the Board to dismiss the complaint on the aforementioned grounds should have been granted.

(d) The Board's findings and the Board's Conclusions of Law II and III that by polling its employees as to their Union sentiment the Respondent has interfered with, restrained and coerced its employees and that said conduct constitutes an unfair labor practice are erroneous and should be reversed.

Wherefore, Respondent prays this Honorable Court that it cause a copy of this answer to be served upon Petitioner, and that upon the pleadings, stipulation of record before the Board and the proceedings set forth in the transcript and upon the

Order made thereon, it make and enter a Decree denying enforcement in whole of said Order of the Board, and setting same aside as contrary to law.

Respectfully submitted,

ROBERTS BROTHERS,
By /s/ ABE EUGENE ROSENBERG,
Attorney for Respondent.

Dated at Portland, Oregon, this 17th day of November, 1953.

[Endorsed]: Filed November 19, 1953.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED ON

In this proceeding, the petitioner, National Labor Relations Board, will urge and rely upon the following point:

The Board properly found that respondent Company violated Section 8 (a) (1) of the Act by conducting at the conclusion of a privileged anti-Union speech a secret poll among its employees to ascertain their desires as to representation by the Union.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 20th day of November, 1953.

[Endorsed]: Filed November 24, 1953.

